

**IN THE UNITED STATES DISTRICT COURT FOR THE  
NORTHERN DISTRICT OF OKLAHOMA**

ZELMA VIDDAURRI, )  
Plaintiff, )  
v. ) Case No. 09-CV-525-GKF-FHM  
MICHAEL J. ASTRUE, )  
Commissioner, )  
Social Security Administration, )  
Defendant. )

**REPORT AND RECOMMENDATION**

On December 8, 2010, the District Court reversed and remanded the decision of the Commissioner for further proceedings. [Dkt. 25]. No appeal was taken from the Judgment and the same is now final. [Dkt. 26].

Pursuant to Plaintiff's application for attorneys fees and expenses [Dkt. 28] under the Equal Access to Justice Act (EAJA), 28 U.S.C. § 2412, and Defendant's response in support of the motion [Dkt. 29], the parties have agreed that an award in the amount of \$3,911.00 for attorneys fees for work performed in this case is appropriate.

The undersigned therefore recommends that Plaintiff be awarded EAJA attorneys fees in the amount of \$3,911.00, in care of counsel for Plaintiff. If attorney fees are also awarded under 42 U.S.C. § 406(b) of the Social Security Act, Plaintiff's counsel shall refund the smaller award to Plaintiff pursuant to *Weakley v. Bowen*, 803 F.2d 575, 580 (10th Cir. 1986).

In accordance with 28 U.S.C. §636(b) and Fed. R. Civ. P. 72(b)(2), a party may file specific written objections to this report and recommendation. Such specific written objections must be filed with the Clerk of the District Court for the Northern District of

Oklahoma on or before January 24, 2011.

If specific written objections are timely filed, Fed.R.Civ.P. 72(b)(3) directs the District Judge to:

determine de novo any part of the magistrate judge's disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

See also 28 U.S.C. § 636(b)(1).

The Tenth Circuit has adopted a "firm waiver rule" which "provides that the failure to make timely objections to the magistrate's findings or recommendations waives appellate review of factual and legal questions." *United States v. One Parcel of Real Property*, 73 F.3d 1057, 1059 (10th Cir. 1996) (quoting *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991)). Only a timely specific objection will preserve an issue for de novo review by the district court or for appellate review.

Signed this 10th day of January, 2011.

  
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**FRANK H. McCARTHY**  
**UNITED STATES MAGISTRATE JUDGE**